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Emeritus Professor Di Yerbury, AO

06/894

Date: 16 Nov 06
To: Maurice Newman
Cc: Malcolm Irving
Fax: 9227 0802 98802016
From: Di Yerbury
No. pages: 3 (Including Fax Header) (15) incl attachments

VERY URGENT

Dear Maurice

The letter from Minter Ellison is every bit as bad as my solicitor conveyed.

Once we seek the injunction, I think it's the start of ongoing court proceedings on a number of fronts, not just about the 125 boxes of materials, and FOI applications, etc, that will go on for a long time, distract University attention, eat up lots of resources, attract a lot of adverse publicity and gossip, and do massive and long-lasting damage.

Surely Council didn't have the full facts and couldn't have envisaged this dangerous situation in August and October, when it refused you or Malcolm the right to sign off the nearly finalised matters concerning my departure, and put Steven Schwartz in control of them? And of course, Council has only ever received Steven's and the University Solicitor's and Minter Ellison's very one-sided accounts. I am being denied even the barest pretence of natural justice in that regard, which is outrageous in itself; and I think several Councillors will be distressed when they find out they were not given all the facts – and a statement by me of my concerns and views on these matters.

Let's hope that Steven Schwartz will respond in a reasonable way to your sensible request, conveyed via Elizabeth More. If he doesn't, isn't it worth making one more serious effort, trying to introduce some common sense into the escalating situation, in the best interests of the University?

In that event, suppose you told Elizabeth, as Acting VC that, in the absence of the VC, she should direct that for the next couple of weeks Minter Ellison cease and desist from their announced actions vis-a-vis the 125 boxes, while you organise a special meeting of Council to discuss the matter, taking my side also into account, to see whether Council believes that the way things are being handled and the court proceedings that will inevitably result are in the best interests of the University? That makes it a matter of University governance, and puts you in charge.

Maurice, I believe most Councillors would be shocked and angered to find out too late that we've ended up in court in this way over such matters, without them even hearing my side of the story, and without being given an opportunity to consider the full situation.

How irresponsible it would be for Steven (and Elizabeth on his behalf as Acting VC) to plunge the University into the courts when, by holding off on further action on the boxes for just a couple of weeks, you and Malcolm, (and Council more generally, if they have to be involved) might be able to avoid such a crisis!

The most ridiculous thing of all is that, by continuing to block my rights to be involved, they're holding things up more and more. As I've explained to you and Malcolm and others repeatedly, there's actually not much to be finalised on the Arts Inventories. I have most of my receipts and records. And once I access my personal arts records, which are being unlawfully withheld from me, it can be easily done. Instead we seem likely to spend months, and possibly years, in legal proceedings. It's madness.

They can't finalise the arts records without me. The records of everything purchased while I've been at MQ do exist. (Minter's comment there is plain wrong, and if that is said in the absence of privilege it will be actionable; and I will take action.) Please see the attachment about why it's only common sense to involve me, and of course it's my legal and moral right to be involved in respect of my own artworks.


I think the astonishing new revelation in Minter's letter that they're actually holding 125 boxes of my materials is meant to include the previously acknowledged 88.

I attach the recent exchanges of letters between solicitors. My solicitor's letter of 7 November lists only some of the offensive and gratuitous actions and events. Several others which involved identified individuals who could be victimised have not been included at this stage; and there have been other actions since 7 November.

I'm sorry to say so, Maurice, but I think Steven's unusual "dominance and control" needs are aimed in considerable part at you and Malcolm: in that regard, I'm probably just a pawn. If things aren't sorted out responsibly on this occasion, I don't think it will disappear as an issue, rather, it will just be harder on the next occasion Steven decides he will not permit any "interference" from you or anyone else in what he chooses to do and how he does it. (I understand that Murdoch's previous Chancellor could give you some interesting examples of such tussles for dominance.)

It's all so unnecessary, inappropriate, spiteful and reckless – and emphatically not in the best interests of the University. And when Councillors learn (as they will) about the reckless spreading of defamatory lies around, based on demonstrably false and fanciful allegations that have never been put to me, I think most will be appalled.

I think this has now become a governance matter for Council, Maurice. I do urge you and Malcolm to take over accordingly, and without further delay, if your efforts don't meet with co-operation. Thank you for your help.

Best regards
Di. 

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ATTACHMENT ABOUT WHY MY INPUT IS NECESSARY
TO FINALISE THE ARTS INVENTORIES

As I've told you, I am the only person who can sort out the provenance of particular paintings owned by me if the receipts are improperly withheld, or earlier ones (eg, from the 1970s) aren't there for other reasons. I know roughly when and from whom I purchased an artwork, so I may be able to go to the gallery or auction house or person concerned. I know whether or not I had it valued at a particular time, so I may be able to track it down in a previous valuation. I will know if I ever sent it to a conservator, who may have records.

I will know if I was photographed with it prior to 1987, as I was in 1986 with a big James Gleeson painting behind me: that photograph is in a 1986 MQ publication, I think, announcing that I would be the next VC. (There's documentation in my possession on that: I just cite it here as an example.)

One Clifton Pugh artwork was listed mistakenly in the University Arts Inventory by someone else as belonging to the University. It is of my nude backside, and was the basis of an award-winning jewellery design. It has a Christmas gift message written on it from Cliff to me as "Dai": he always insisted on spelling it that way as a joke. The "Dai" was wrongly recorded in the University's Arts Inventory as "Dan". Obviously I don't have a receipt for a gift, and Cliff died some years ago. However, if my ownership was disputed, Judith Pugh who was married to Cliff at the time, will readily testify that she was present when I posed for Cliff, and when he gave it to me. There are a lot of people who saw the work at my home years before I came to MQ, and still remember it, having joked that they didn't expect to see their boss' nude backside when they visited me.

Some of my pre-1987 acquisitions were on display at the Australia Council when I was CEO, so I may be able to demonstrate my ownership by records or by statements from my previous colleagues from that time. I was filmed with some of my artworks in the background. I talked of certain paintings in newspaper interviews and on the ABC, etc, etc, well before I came to Macquarie. There's a loan agreement for the purchase of my valuable Susan Norrie painting, from her series which won the Moet and Chandon Award. Some paintings are listed on tax returns. I may be able to track down old insurance policies; and so on.

No one else is privy to, or could put together, such information and potential evidence. As I say, receipts will be unavailable for only a handful of earlier artworks, as long as more recent receipts are returned to me. We can fix the whole thing up quickly with my help. It is ridiculous for people who are not experts in the visual arts to try to do it without me; and it would be even more ridiculous for us to end up in the courts over such a matter simply because Steven and the University solicitor refuse to allow me to be involved in their amateurish, long-drawn out and unnecessarily costly efforts to finalise the records without me.

Di Yerbury